THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date:10-11-2005

WRIT PETITION No.23325 OF 2005

BETWEEN:

Kalvala Prakash Rao.

…Petitioner

And

The Government of Andhra Pradesh, Rep.by its Principal Secretary (Irrigation), Secretariat Building, Hyderabad & others.

…Respondents

ORDER:

The petitioner seeks to issue a writ of Mandamus, declaring the proposed construction of Pothana Kala Bhavan in Shikam Land of Mothkur Temple in Sy.No.430 which is below F.T.L. level as illegal and arbitrary and consequently direct the respondents not to proceed

with any constructions in Shikam Land of Mothkur Tank (Pedda Cheruvu) and also protect and preserve the irrigation tanks without effecting its original origin which are serving the various public needs and helping irrigation of agricultural lands.

The learned Government Pleader appearing for the respondents submits that the prayer in this writ petition is squarely covered by the orders in W.P.No.5517 of 2005, wherein counters were filed stating that no construction is being taken up in Sy.No.430. It is stated that Mothkur Pedda Cheruvu is existing in Sy.No.430 over an extent of Ac.95.14 guntas (i.e., Cheruvu Shikam) without affecting the total ayacut land admeasuring Acs.111.05 guntas. The total extent of the tank admeasuring Ac.95.14 guntas is not at all affected and no constructions have been made in the existing tank area and the construction proposed to be made is only in Sy.No.431, which is not a shikam land. In view of the aforesaid counters, the writ petition was dismissed by order dated 26-10-2005.

The learned counsel for the petitioner submits that in fact Sy.No.431 also comes within the shikam area and within the full tank level. In view of the specific reply in the counters filed by the respondents, stating that Sy.No.431 is not a shkam land, I am of the opinion that the said dispute of fact cannot be decided in this Writ Petition. More over, there is no specific averment in the writ petition that Sy.No.431 is a shikam land. The only averment in the writ petition is that Mothku Pedda Cheruvu is in Sy.No.430 and no constructions can be permitted in the said shikam land as per the orders of the Government in Memo R.C.No.65961/Asn.I/ (1)/97-11, dated 8-2-1999. It is stated that no constructions have been permitted in the shikam land of Mothkur Pedda Cheruvu.

Having regard to the facts and circumstances of the case, the Writ Petition is disposed of directing the respondents not to make any constructions of Pothana Kala Bhavan in Shikam land of Mothkur Temple in Sy.No.430. No costs.

V.ESWARAIAH, J

Date:10-11-2005.

Shr.